



# Better Regulation Practices across the European Union

HIGHLIGHTS



# BETTER REGULATION PRACTICES ACROSS THE EUROPEAN UNION





# Better regulation across the EU: Why is it important?

**Laws and regulations affect the daily lives of every EU citizen and every business operating in the EU.**

The European Union has become a key standard-setter in areas such as consumer protection, competition, and workplace safety. At the same time, EU Member States remain important policy makers by setting their own domestic regulations as well as through their role in shaping EU laws. When these laws and regulations are well designed, they can promote welfare and boost the economy. Badly designed laws however hinder growth, harm the environment and put the health of citizens at risk.

**Regulatory policy is vital both for the EU and its Member States to improve the quality of laws and regulations.**

Regulatory policy is a toolkit that helps policymakers keep pace with technological, societal, and environmental changes. Key tools include the use of evidence and stakeholder participation in the development and review of laws and regulations. In the EU, regulatory policy has progressed under the better regulation agenda and played a crucial role in shaping the current regulatory processes. At the same time, all EU Member States have adopted their own regulatory policies.

**This report compares practices to improve the quality of laws and regulations across all 28 EU Member States and the European Union including:**

- Stakeholder engagement in the development of laws and regulations (Chapter 2)
- Regulatory impact assessment (RIA) (Chapter 3)
- Ex post evaluations of laws and regulations (Chapter 4)
- The use of RIA and stakeholder engagement by EU Member States when negotiating and transposing EU law (Chapters 1, 2 and 3)
- Country profiles for each EU Member State and the European Union which provide an overview of countries' practices and recent developments in each of the above-mention areas (Chapter 5).

Further information on the report, including the composite indicator results and the country profiles, are available on the official OECD webpage of the report (<http://oe.cd/better-regulation-across-the-eu>).







# This brochure highlights the 5 key findings of the report

**In 2017, the European Union and the 28 EU Member States show a strong political commitment towards regulatory reform. All of them have adopted an explicit policy to promote the quality of regulations. Stakeholder engagement and RIA have been almost universally adopted across the EU and many Member States' governments have significantly improved their practices over the last decade. Nevertheless, there is a gap between the strong overall commitment to regulatory quality of EU Member States and the effective implementation of regulatory tools:**

- 1. Stakeholder engagement:** EU Member States have heavily invested in tools to consult on draft laws and regulations. Nevertheless, stakeholders rarely have the opportunity to provide input at an early stage of the policy development and it often remains unclear how their feedback has been considered.
- 2. Regulatory impact assessment:** While RIA has been adopted by nearly all EU Member States, there is a substantive gap between the outward commitment and effective use in practice. RIA is often limited to the government's preferred regulatory option, begins only after regulatory proposals have already been developed and lacks transparency.
- 3. Ex post evaluation of laws and regulations:** EU Member States rarely assess if regulations achieve their policy goals as expected.
- 4. Regulatory management and EU law:** Member States generally conduct RIA and stakeholder engagement when transposing EU directives. The use of these regulatory management tools is less common when Member States form their negotiation position during the EU legislative process, before a draft law is adopted at EU level. The European Commission renewed its political commitment towards the principles of better regulation with its 2015 Better Regulation Package and compares favourably to most EU members. Nevertheless, there is room for improvement for everyone.
- 5. Regulatory oversight and quality control across the EU:** Incentives for ministries to comply with better regulation policies are weak in most Member States. Quality control and oversight usually focus only on RIA and few oversight bodies can ask ministries to revise their impact assessments if the quality is insufficient. Only a few countries and the European Union have evaluated their stakeholder engagement practices.





# Stakeholder engagement across the European Union

**In times of increasing mistrust in governments, engaging with those concerned and affected by regulations is fundamental to increase the quality and acceptance of regulations.**

Citizens, businesses, consumers, employees, trading partners and other stakeholders can offer valuable inputs on the feasibility and practical implications of planned regulations. Meaningful stakeholder engagement in the development of regulations can lead to higher compliance with regulations, in particular when stakeholders feel that feel their views have been considered. The European Union and the Member States have heavily invested in tools to consult on draft laws and regulations:

- All Member States have consultation requirements in place.
- The vast majority of Member States have established online government portals to better communicate with affected parties when developing regulations.
- The European Commission has invested significantly into improving its dialogue with stakeholders throughout the policy development process through its online portal “Have your say”.

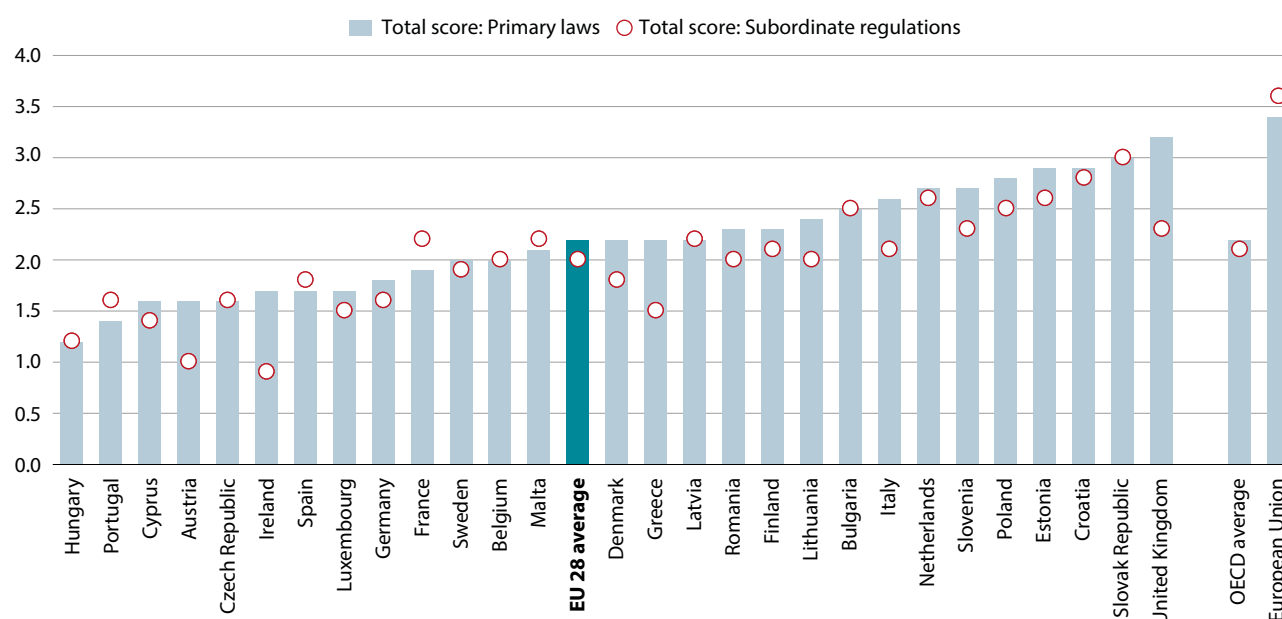
## EXAMPLES OF ONLINE CONSULTATION PORTALS AND INTERACTIVE WEBSITES ACROSS EU MEMBER STATES

In **Croatia**, major draft regulations are published for consultation on the interactive consultation portal e-Savjetovanja for a minimum of 30 days. The website allows the public to provide general feedback on the draft or to provide comments on the individual articles of a draft regulation. The administrative bodies responsible for the draft legislation are required to respond to all comments.

In **Slovakia**, all legislative drafts and their accompanying impact assessments are automatically published on the government portal [www.slov-lex.sk](http://www.slov-lex.sk). Written comments can be submitted by members of the general public either as individual comments or as “collective comments”. Whenever a comment receives support from 500 individuals or organisations, ministries are obliged to provide written feedback on the comment.

Source: OECD (2019): *Better Regulation Practices across the European Union*, OECD Publishing, Paris; OECD Pilot database on stakeholder engagement practices in regulatory policy.

## Stakeholder engagement on subordinate regulation is less developed compared to primary laws in many EU countries



Note: The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score with a maximum score of 4.  
Source: OECD Indicators of Regulatory Policy and Governance (iREG) 2018, <http://oe.cd/ireg>.

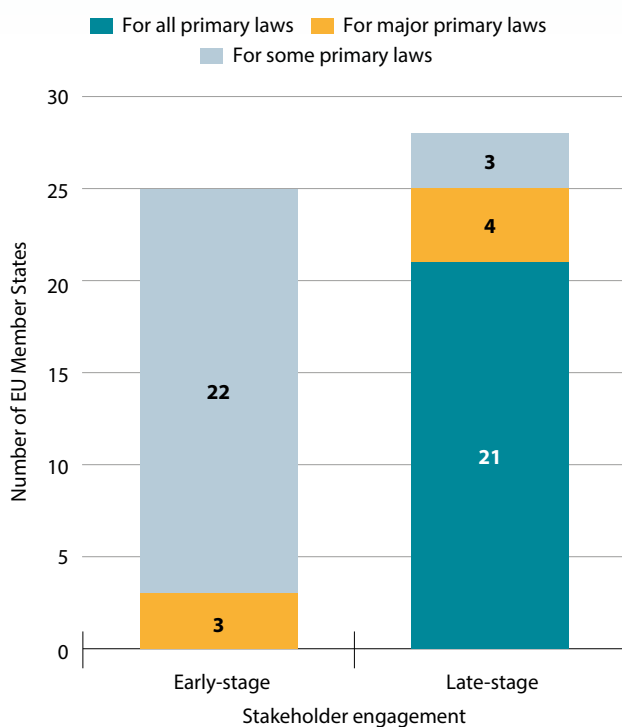
## Still, stakeholders are rarely engaged in the early development of a regulatory proposal.

Consultation at an early stage of policy development – where a regulatory problem has been identified and feasible options are being considered – is far less developed than they are once a decision has been made to regulate, and a preferred regulatory option has been identified.

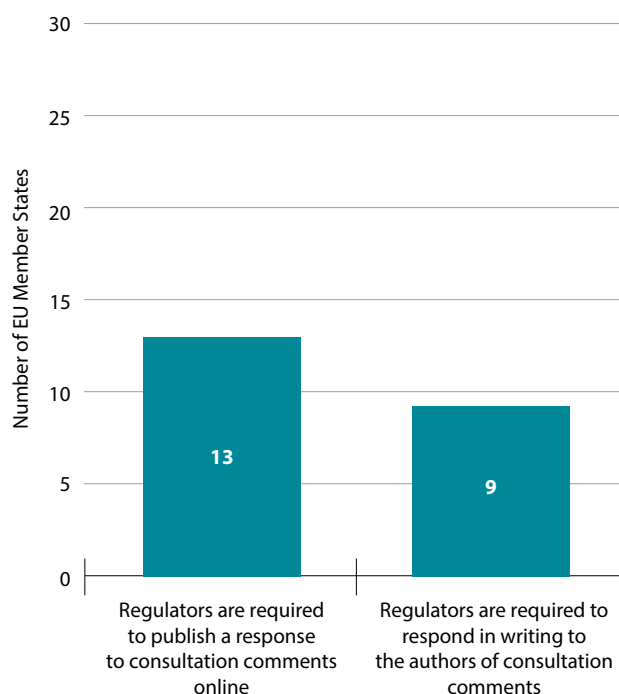
## Stakeholders are also often not informed by policy makers about how they have helped to shape and, ultimately, improve regulatory proposals.

This may lead to unwillingness among stakeholders to participate in further consultations and possibly to less civic engagement and voluntary compliance with regulations – the opposite of what stakeholder engagement ought to achieve.

### EU Member States conduct stakeholder engagement more systematically at the late stage of policy development



### In less than half of EU countries, policy makers are required to provide feedback to stakeholders on the comments received



Note: Data is based on 28 EU Member States.  
Source: OECD Indicators of Regulatory Policy and Governance (iREG) 2018, <http://oe.cd/iereg>.





# Regulatory impact assessment across the European Union

**The use of regulatory impact assessment is widespread across the European Union and Member States.**

Regulatory impact assessment (RIA) enables policy makers to decide whether and how a new regulation can deliver the greatest net benefit to society. It compares alternative ways of addressing public policy objectives to identify and select the most appropriate policy instrument. Governments across the EU generally demonstrate a high political support for an evidence-based policy process. RIA has been embedded as a core practice by the European Union and nearly all Member States. When they conduct RIA, they assess a broad range of impacts, generally related to domains such as government, business (including small business), competition and the environment.

## EXAMPLES OF REGULATORY IMPACT ASSESSMENT PRACTICES

For the **European Commission**, impact assessments are required for all legislative and regulatory initiatives when the expected economic, environmental or social impacts of EU action are likely to be significant. The Regulatory Scrutiny Board (RSB) is in charge of performing quality assurance review of the assessment's results.

In the **United Kingdom**, a preliminary and final stage RIA that takes into account stakeholder comments are carried out for all regulations except for deregulatory and low-cost measures, which are eligible for a fast track procedure. Recently, initial review notices have been introduced to alert regulators at an early stage if there are concerns with the quality of the RIA to allow for enough time for improvement.

Source: OECD (2019): Better Regulation Practices across the European Union, OECD Publishing, Paris.

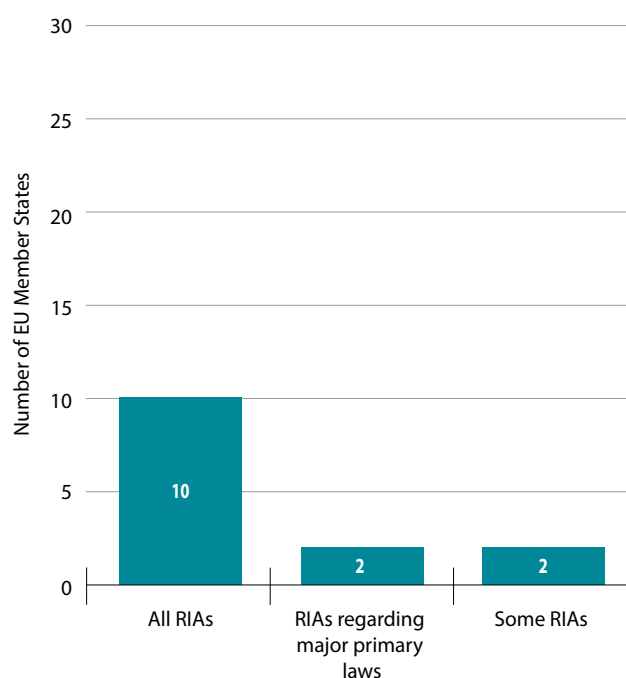
**However, there is a substantive gap between the outward commitment to RIA and effective practices among Member States:**

- RIA frequently remains limited to the government's preferred regulatory option.
- The assessment often begins only after regulatory proposals have already been developed and the decision to regulate has already been made.
- The quantification of costs and benefits is often focussed on costs, which makes assessing whether regulations justify their costs difficult.

## Transparency of RIA is relatively low across EU Member States

Only a minority of EU countries systematically publishes RIAs for consultation to gain input from stakeholders.

**Less than half of the EU Member States systematically publish RIA for the purposes of stakeholder consultation**



Note: Data is based on 28 EU Member States.

Source: OECD Indicators of Regulatory Policy and Governance (iREG) 2018, <http://oe.cd/ireg>.

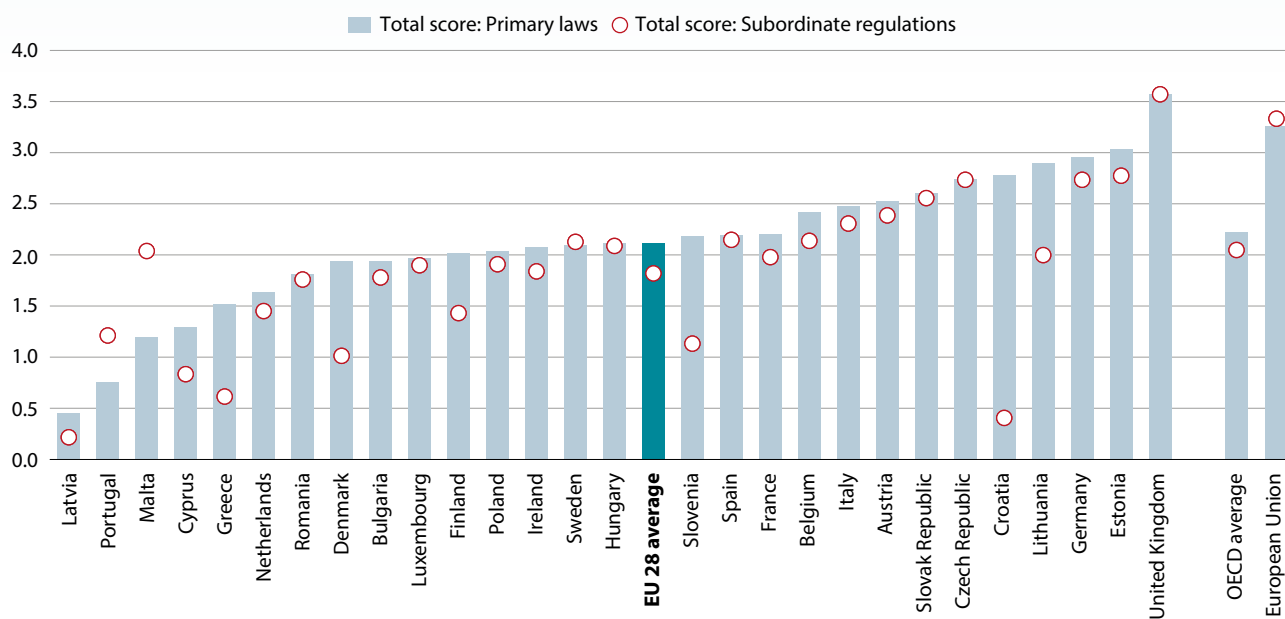


## Most EU Member States have not yet developed proportional approaches towards RIA.

Member States generally do not use threshold tests to determine the depth of the RIA analysis based on the significance of the regulation. Consequently, RIA may sometimes not be proportionate to the expected impacts

of the regulation. Where a procedure exists to determine the level of assessment, it tends to focus on the cost to business only. It is however important that RIA threshold tests are based on the expected significance of impacts. The impacts of regulations include both positive and negative impacts to any area of society or the environment, and as such ought to be broader than business impacts.

## While nearly all EU Member States have embedded RIA as a core part of their regulatory management tools, RIA systems substantially differ across the EU



Note: The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score, with a maximum score of 4.  
Source: OECD Indicators of Regulatory Policy and Governance (iREG) 2018, <http://oe.cd/ireg>.







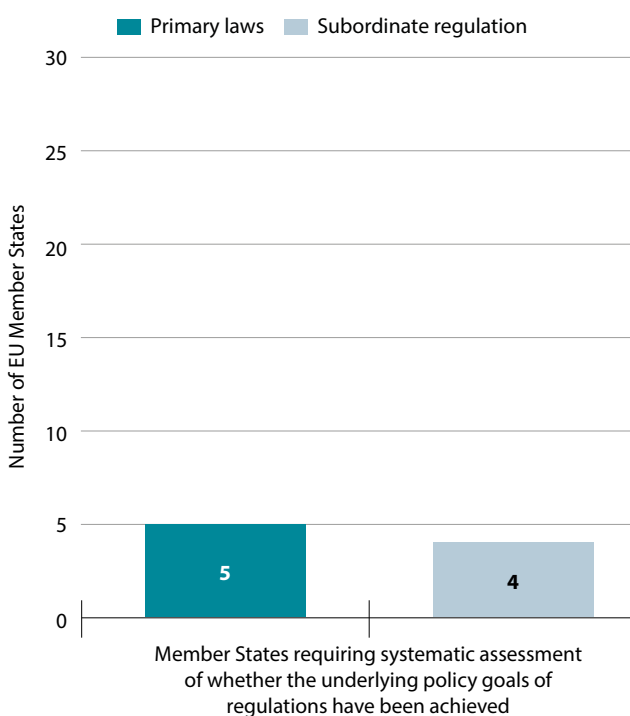
# Ex post reviews of laws and regulations across the European Union

**EU Member States need to shed more light on whether laws and regulations deliver on the expected results: *ex post* evaluation remains an underdeveloped practice.**

To keep pace with rapid changes, Member States and the European Union need to regularly review if regulations work in practice. However, most EU countries still regulate in the dark and do not systematically evaluate existing regulations. Worse still, they do not

systematically assess the achievement of regulatory goals, which is vital to determine whether laws remain appropriate. Compared to most EU countries, the Commission has a more advanced evaluation system, but there is room for improvement for everyone.

## Very few EU Member States systematically assess if regulations achieve their policy goals



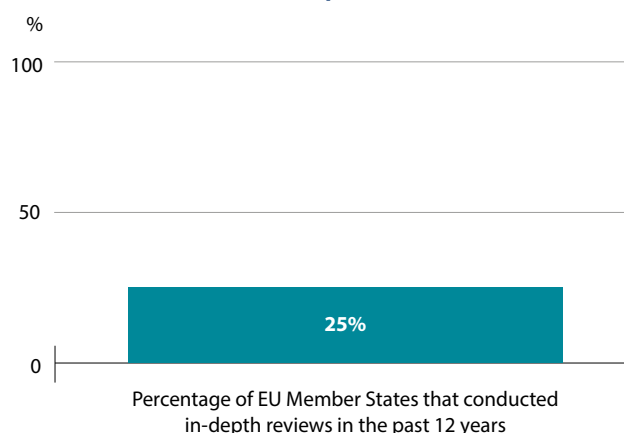
Note: Data is based on 28 EU Member States.

Source: OECD Indicators of Regulatory Policy and Governance (iREG) 2018, <http://oe.cd/ireg>.

## Efforts to review existing regulations are largely driven by the motivation to reduce regulatory burden.

While almost all Member States have conducted *ad-hoc* reviews focusing on administrative burdens, in-depth reviews to inform more far-reaching reforms in particular policy areas or sectors remain scarce.

## Only a quarter of EU Member States made use of in-depth reviews



Note: Data is based on 28 EU Member States.

Source: OECD Indicators of Regulatory Policy and Governance (iREG) 2018, <http://oe.cd/ireg>.



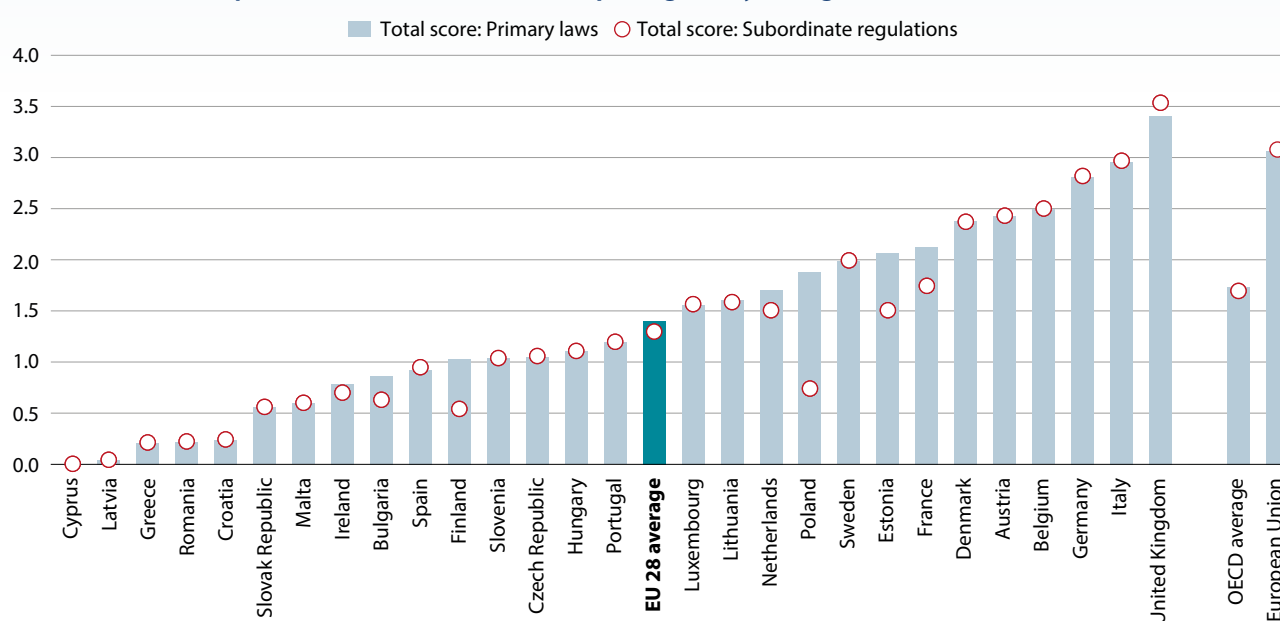
### **Ex post evaluations of individual regulations often lack a sound methodology.**

While almost all EU Member States provide methodical guidance on *ex ante* assessments, only half do so for *ex post* evaluation. When *ex post* evaluations are conducted, they rarely review if alternatives to the existing regulations could deliver better results.

### **Reviews comparing regulations across countries are particularly useful in the EU context**

Given the amount of legislation EU countries share, conducting cross-jurisdictional reviews can help to identify opportunities for improvement in specific areas, address inconsistencies and identify gold plating in the implementation of EU-law.

#### **Ex post evaluation is the least developed regulatory management tool across the EU**



Note: The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score, with a maximum score of 4.

Source: OECD Indicators of Regulatory Policy and Governance (iREG) 2018, <http://oe.cd/ireg>.

#### **SELECTED REVIEWS COMPARING REGULATORY PROCESSES AND OUTCOMES ACROSS EU MEMBER STATES**

In **Denmark**, the EU Implementation Council can initiate so-called “neighbour checks”, i.e. reviews of methods used to implement EU legislation in other Member States with the aim to identify best practices. For example, in 2016, the Danish Ministry of Energy, Utilities and Climate compared the transposition of the Energy Efficiency Directive in Denmark with the implementation in Sweden, Finland, Germany and the United Kingdom.

**Italy** compared in 2016 its notification requirements for food business operators with those in France, Spain and the United Kingdom. As a result of the review, Italy revised and standardised the notification requirements in line with practices in other European countries.

Source: OECD (2019): *Better Regulation Practices across the European Union*, OECD Publishing, Paris.





# Regulatory management at the interface between EU Member States and the European Union

**Regulatory policies of the EU and EU Member States need to be complementary to effectively improve legislative quality in the EU.**

EU laws are developed and implemented in close interaction between EU institutions and EU Member States. The quality of laws and regulations in the EU therefore depends on the quality of the regulatory management systems, both in Member States and in EU institutions.

**EU countries do not usually facilitate the early contribution of their citizens to the development of EU legislation.**

Only around half of EU Member States directly inform domestic stakeholders about the Commission's consultations processes. Informing domestic stakeholders

however can facilitate the participation of a broad range of stakeholders in EU consultations and help to identify particular local issues.

**The majority of EU Member States does not apply their regulatory toolkit to EU law before it is adopted at EU level.**

The negotiation phase in the Council of the EU allows Member States to amend the European Commission proposals before they become binding EU law. However, most EU countries do not rely on impact assessment to define their negotiation position. This means that potential domestic impacts may not be properly identified at this stage. Similarly, the majority of individual Member States does not engage with domestic stakeholders to form a negotiating position.

## SELECTED EXAMPLES OF RIA AND STAKEHOLDER ENGAGEMENT APPLIED TO EU LEGISLATION

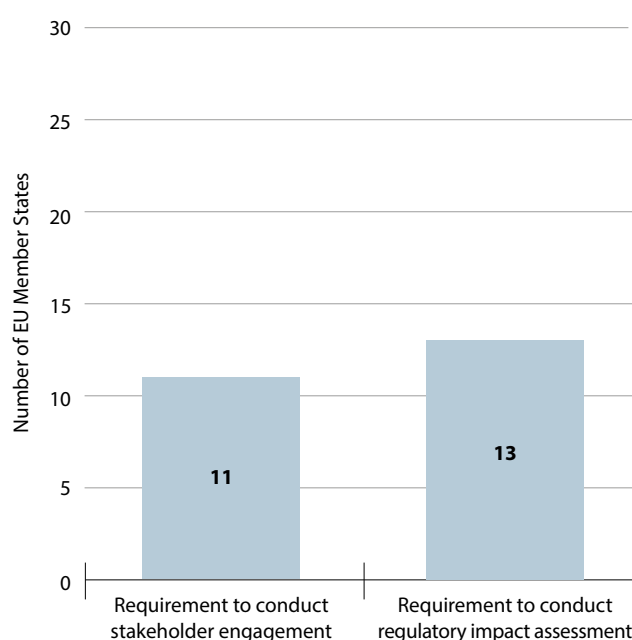
In **Ireland**, departments are required in-principle to conduct RIAs on all Commission proposals leading to EU directives and significant EU regulations. The revised RIA guidelines indicate that the RIA process should be commenced as early as possible as and no later than four weeks from when the Commission publishes the proposed legislation and its own impact assessment.

**Germany** has a specific threshold test during the negotiating stage of EU legislation. Where the Commission's own impact assessment identifies expected compliance costs in excess of €35 million per year across the EU, German Ministries are required to carry out RIA to assess the compliance costs that are expected to arise in Germany. The RIA then forms the basis for the Federal Government in its negotiation of the legislative proposal at the European Union level.

In **Malta**, the Malta-EU Steering Action Committee (MEUSAC) provides information on Malta's positions during EU decision-making and steers the consultation process. The Core Group of the committee brings together representatives of the government, the national parliament, constituted bodies, three civil society representatives and other EU-related entities.

Source: OECD (2019): *Better Regulation Practices across the European Union*, OECD Publishing, Paris.

## Less than half of EU countries require the application of regulatory management tools to form a negotiation position



Note: Data is based on 28 EU Member States.

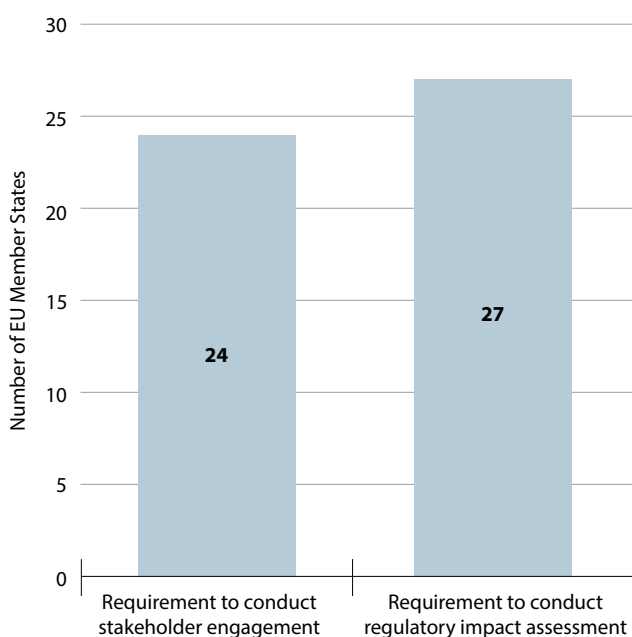
Source: OECD Indicators of Regulatory Policy and Governance (IREG) 2018, <http://oe.cd/ireg>.



**Individual Member States generally apply regulatory management tools to support the transposition of EU directives in the domestic context.**

Both RIA and stakeholder engagement are useful tools at this stage to identify the best implementation solution. EU directives are usually subject to domestic legislative processes and therefore to the same requirements as any other domestic law in most EU countries.

**Almost all EU countries have requirements in place to conduct stakeholder engagement and RIA to inform the transposition of EU directives**



Note: Data is based on 28 EU Member States.

Source: OECD Indicators of Regulatory Policy and Governance (IREG) 2018, <http://oe.cd/ireg>.



**Provisions going beyond the mandatory minimum requirements are often not properly assessed.**

Where EU countries include additional regulatory measures in excess of those provided in EU laws, it is important that these measure be subject to appropriate consultation and impact assessment as part of their design, to ensure that the anticipated gains from EU laws are realised. Just over a half of the Member States include a specific assessment of provisions added at the national level which go beyond those established in the EU directive. Only eight are required to assess the marginal impact that the gold plating provisions have had.





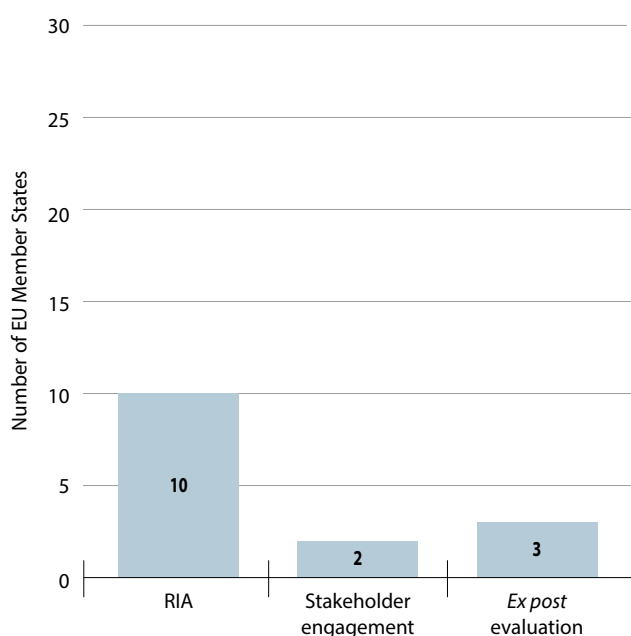
# Regulatory oversight and quality control across the EU

**Despite its instrumental role, regulatory oversight is still weak across the EU.**

Regulatory oversight helps ensure that better regulation strategies are applied homogenously across the public administration. While all EU countries have established a body that is responsible for the promotion of regulatory policy as well as monitoring and reporting on regulatory reform in general, oversight is still patchy:

- The quality control of regulatory management tools is heavily focussed on Regulatory Impact Assessment (RIA), while neglecting other relevant elements of regulatory policy such as stakeholder engagement.
- Where EU members have invested in mechanisms to scrutinise the quality of RIAs, few oversight bodies can ask for deficient RIAs to be revised.
- Few EU Member States evaluate whether their use of regulatory management tools are implemented effectively. The use of the Commission's regulatory management tools has been reviewed both by the European Commission itself as well as the European Court of Auditors. In 2018, the European Commission started a public stocktaking exercise of its better regulation agenda, focussing on RIA, stakeholder engagement and *ex post* evaluation.

## Only few EU Member States regularly report on the performance of regulatory management tools



Note: Data is based on 28 EU Member States.

Source: OECD Indicators of Regulatory Policy and Governance (IREG) 2018, <http://oe.cd/ireg>.

## EXAMPLES OF REPORTS EVALUATING REGULATORY MANAGEMENT TOOLS

**Belgium** has released a series of reports on the implementation of RIA. Its [most recent report](#) noted that RIA is not yet well integrated into Belgian policy making, and occurs too late in the policy development process. Although the review identified that the quality of RIAs was not satisfactory, it did recognise that there were some good examples that were explicitly highlighted for other ministries to follow.

In 2017, the **Netherlands** reviewed the extent to which its internet consultation system was valued by citizens, companies, and departmental staff. The results indicated that internet consultation is systematically used by government officials, but also pointed to a number of weaknesses. For instance, [the report](#) concluded that it is not easy for citizens and businesses to understand how their consultation comments were taken into account.

**Austria** publishes annual reports on its *ex post* evaluation system ("Wirkungsorientierte Folgenabschätzung"). These reports provide an overview of the annual activities of ministries that conduct *ex post* evaluation as well as insights into the performance of the *ex post* system as a whole. A finding from the [2017 annual report](#) was that *ex post* evaluations overall still need to more systematically identify potential areas for improvement when regulations are evaluated.

Source: OECD (2019): Better Regulation Practices across the European Union, OECD Publishing, Paris.

## The role of parliaments in regulatory oversight across the EU is limited.

Parliament is the ultimate instance that approves legislation, and initiates a significant share of laws in many EU countries. Contrary to their eminent place in law-making, parliaments are not very involved in regulatory quality control across the EU. Parliaments in EU countries could help strengthen the quality of laws by scrutinising RIAs prepared by the executive to check if a legislative proposal is grounded in solid evidence, or use insights from RIAs to inform parliamentary debates about the impacts of proposed legislation. In the European Parliament, for instance, a dedicated Directorate carries out quality control of European Commission impact assessments, prepares complementary impact assessments and conducts *ex post* evaluation of existing regulation.

# The OECD Regulatory Indicators Survey and the composite indicators

The data presented in the 2019 *Better Regulation Practices across the EU report* are the results of the 2014 and 2017 indicators of Regulatory Policy and Governance (iREG) surveys. The results from these surveys for OECD members and accession countries as well as the European Union have also been presented in the 2015 and 2018 Regulatory Policy Outlooks. Composite indicators and country profiles for the five EU countries that are not members of the OECD are published for the first time and are solely based on the data from the 2017 iREG survey.

The Regulatory Indicators Survey investigates in detail three principles of the 2012 OECD Recommendation of the Council on Regulatory Policy and Governance: stakeholder engagement, regulatory impact assessment (RIA) and *ex post* evaluation. Three composite indicators were developed based on information collected through the surveys for these areas. Each composite indicator is composed of four equally weighted categories:

- **Systematic adoption** which records formal requirements and how often these requirements are conducted in practice
- **Methodology** which gathers information on the methods used in each area, e.g. the type of impacts assessed or how frequently different forms of consultation are used;

- **Oversight and quality control** records the role of oversight bodies and publicly available evaluations; and
- **Transparency** which records information from the questions that relate to the principles of open government e.g. whether government decisions are made publicly available.

The data underlying the composite indicator reflect practices and requirements in place at the national level of government, as of 31 December 2017. Whilst the indicators provide an overview of a country's regulatory policy system, they cannot fully capture the complex realities of its quality, use and impact. In-depth country reviews are therefore required to complement the indicators and to provide specific recommendations for reform. A full score on the composite indicators does not imply full implementation of the Recommendation. To ensure full transparency, the methodology for constructing the composite indicators and underlying data as well as the results of sensitivity analysis are available publicly on the OECD website (<http://oe.cd/ireg>).

*Note by Turkey:*

The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

*Note by all the European Union Member States of the OECD and the European Union:*

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.











Laws and regulations affect the daily lives of businesses and citizens. High-quality laws promote national welfare and growth, while badly designed laws hinder growth, harm the environment and put the health of citizens at risk. The 2019 *Better Regulation Practices across the EU* report analyses practices to improve the quality of laws and regulations across all 28 EU Member States and the European Union. It systematically assesses the use of evidence and stakeholder participation in the design and review of domestic laws and regulations based on the OECD Indicators of Regulatory Policy and Governance. It also provides insights into individual Member States' use of regulatory management tools as they relate to EU laws. The report presents good regulatory practices and highlights areas that should receive further attention and investment.

Related links:

- **Full report: [Better Regulation Practices across the European Union](#)**
- **Indicators and underlying data and methodology**
- **Regulatory Policy Outlook 2015 and Regulatory Policy Outlook 2018**
- **2012 Recommendation of the Council on Regulatory Policy and Governance**
- **OECD Measuring Regulatory Performance Programme**
- **OECD work on regulatory policy**



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 <http://oe.cd/ireg>

